BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	WC Docket No. 17-287
Bridging the Digital Divide for Low-Income Consumers	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197

PETITION OF TELRITE CORPORATION D/B/A LIFE WIRELESS, I-WIRELESS, LLC AND AMERIMEX COMMUNICATIONS CORP. D/B/A SAFETYNET WIRELESS FOR PARTIAL RECONSIDERATION OF ORDER ON RECONSIDERATION AND RECONSIDERATION OF MEMORANDUM OPINION AND ORDER

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SUMMARY

Pursuant to section 1.429 of the Federal Communications Commission's (Commission's) rules, Telrite Corporation d/b/a Life Wireless (Telrite), i-wireless, LLC (i-wireless) and AmeriMex Communications Corp. d/b/a SafetyNet Wireless (SafetyNet) (collectively, the Petitioners) hereby submit this Petition for Reconsideration requesting that the Commission reconsider in part the Order on Reconsideration and reconsider the Memorandum Opinion and Order (MO&O) contained within the Lifeline Digital Divide Order adopted on November 16, 2017.

First, the Commission should reconsider its decision to "eliminate the port freeze for voice and broadband Internet access services found in section 54.111 of the Commission's rules." In concluding that the sole purpose of the port freeze rule was to facilitate market entry and encourage competition in the Lifeline program and that "the disadvantages to consumers of the port freeze rule, in practice, outweigh the anticipated advantages," the Commission fails to consider that the rule has numerous benefits beyond improving competition. Critically, the 60-day port freeze for voice services is a key tool for the Universal Service Administrative Company (USAC) to control waste and program administrative costs by reducing the number of required database "dips" to verify Lifeline applicant information, as well as protect the integrity of the Lifeline program by limiting instances of consumer "flipping" that perpetuates a perception of waste, fraud and abuse in the program.

The Commission should also reconsider elimination of the 12-month port freeze for broadband service because the advantages far outweigh any potential disadvantages. The 12-month port freeze has been a principal driver of transitioning the Lifeline program from one that primarily supported voice service to one that now primarily supports bundled broadband and

voice service offerings. Moreover, should the Commission seek to resolve actual or perceived lack of consumer choice in the Lifeline program, there are other, far more effective means of accomplishing this goal than to eliminate a tool that has a proven track record of benefitting the program and consumers.

Second, the Commission should reconsider its conclusion in the MO&O that "broadband Internet access delivered via Wi-Fi is not eligible for reimbursement as mobile broadband under the Lifeline program rules." This conclusion represents a misreading of the law, the Commission's rules, and the 2016 Lifeline Modernization Order, because it ignores the statutory and regulatory definitions underlying mobile broadband as well as evidence that Premium Wi-Fi service is a mobile technology and has been considered part of the next generation of mobile technologies. Additionally, the MO&O ignores and misinterprets substantial evidence in the record about Premium Wi-Fi service and misconstrues the nature of the service. Finally, by limiting broadband in the Lifeline program only to licensed, cellular service, the Commission fails to adhere to its long-standing policy of technology neutrality and reduces consumer choice by removing a competitive and innovative solution from the marketplace.

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Pursuant to section 1.429 of the Federal Communications Commission's (Commission's) rules,[1] Telrite Corporation d/b/a Life Wireless (Telrite), i-wireless, LLC (i-wireless) and AmeriMex Communications Corp. d/b/a SafetyNet Wireless (SafetyNet) (collectively, the Petitioners) hereby respectfully request that the Commission reconsider in part the Order on Reconsideration and reconsider the Memorandum Opinion and Order (MO&O) contained within its Lifeline Digital Divide Order.[2] Specifically, the Commission should reconsider its decision to "eliminate the port freeze for voice and broadband Internet access services found in section

[1] 47 C.F.R. § 1.429.

[2] *Bridging the Digital Divide for Low-Income Consumers Lifeline and Link Up Reform and Modernization Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) (referenced herein as the Order on Reconsideration, MO&O, Fourth Report and Order, or Notice of Proposed Rulemaking in accordance with the paragraph or section cited).

54.111 of the Commission's rules."[3] Additionally, the Commission should reconsider its conclusion that "broadband Internet access delivered via Wi-Fi is not eligible for reimbursement as mobile broadband under the Lifeline program rules."[4] As explained below, the Order on Reconsideration and MO&O contain material legal errors, misconstrue basic facts about the port freezes and Premium Wi-Fi services, and contravene the Commission's laudable objective of modernizing the Lifeline program to focus on broadband services and long-standing policy of technology neutrality. For these reasons, the Commission should reconsider and reverse the decision in the Order on Reconsideration to eliminate the voice and broadband Lifeline benefit port freezes and the decision in the MO&O regarding Premium Wi-Fi services.

I. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO ELIMINATE THE PORT FREEZES FOR LIFELINE-SUPPORTED VOICE AND BROADBAND SERVICES

In the Order on Reconsideration, the Commission incorrectly asserts that the sole purpose of the port freeze rule was to facilitate market entry and encourage competition in the Lifeline program, and concludes that "the disadvantages to consumers of the port freeze rule, in practice, outweigh the anticipated advantages."[5] In so doing, however, the Commission fails to consider that the rule has numerous benefits beyond improving competition. As explained below, the 60-day port freeze for voice services is a key tool for the Universal Service Administrative Company (USAC) to control program administrative costs, as well as protect the integrity of the Lifeline program, and the 12-month port freeze for broadband service has been a principal driver of transitioning the Lifeline program from one that primarily supported voice service to one that

[3] Order on Reconsideration ¶ 33.

[4] MO&O ¶ 47.

[5] Order on Reconsideration ¶ 35.

now primarily supports bundled broadband and voice service offerings. Moreover, should the Commission seek to resolve actual or perceived lack of consumer choice in the Lifeline program, there are other, far more effective means of accomplishing this goal than to eliminate a tool that has a proven track record of benefitting the program and consumers. Therefore, the Petitioners respectfully submit that the Commission should reconsider the decision to eliminate the port freezes for Lifeline-supported voice and broadband services.

A. The 60-Day Port Freeze For Lifeline Voice Service Is a Well-Established Mechanism to Control Program Costs and Avoid Actual and Perceived Waste, Fraud and Abuse in the Lifeline Program

The 60-day port freeze for Lifeline-supported voice service was initially implemented by USAC as part of the National Lifeline Accountability Database (NLAD) prior to its codification by the Commission.[6] This this was done not because USAC was trying to incentivize market entry or more robust service offerings, but rather as an administrative measure to minimize costs and protect program integrity. Without a 60-day port freeze to combat "flipping," Lifeline applicants that would abuse the program can enroll with multiple ETCs in a single day, week or month, drive increased program costs and receive multiple allotments of minutes or megabytes in a single month, in addition to potentially multiple devices. Such abuses are wasteful and they can lead to widespread public perceptions of waste and fraud in the program. As explained herein, the 60-day port freeze has been successful at achieving the important objectives of minimizing abuse and protecting program integrity and should be retained.[7]

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[6] *See Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 385 (rel. Apr. 27, 2016) (2016 Lifeline Modernization Order).

[7] In the alternative, the Commission should allow USAC to continue, through the NLAD, to "deny a Lifeline provider's request to transfer that subscriber's benefit to a new Lifeline provider if a subscriber has enrolled or has had their Lifeline benefit transferred within the past 60 days" even in the absence of a codified port freeze. This approach would be consistent with the

1. The 60-Day Port Freeze Is an Essential Tool to Minimize Lifeline Program Waste

As the Commission is aware, every attempted enrollment in the Lifeline program imposes costs on USAC and on the ETC through which a consumer submits an application. For USAC, these costs arise primarily as a result of accessing (or "dipping") various public and private databases to verify information about a Lifeline applicant. Currently, the NLAD verifies subscriber addresses through the USPS Address Matching Service (AMS), and conducts Third Party Identity Verification (TPIV) through Lexis Nexis to confirm subscriber names, dates of birth, and Social Security numbers.[8] The Petitioners also understand that as of November 2017, the NLAD began dipping the Social Security Master Death Index to ensure that Lifeline benefits are not provided to deceased individuals.[9] Some, if not all, of these dips result in a per query cost.[10] Upon launch of the National Verifier, USAC will not only have to run the existing NLAD checks, but will also dip all automated data source(s) available in the subscriber's state to

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Commission's apparent recognition in the Notice of Proposed Rulemaking section of the Lifeline Digital Divide Order that USAC may implement certain "administrative requirements" for the Lifeline program. *See* Notice of Proposed Rulemaking ¶ 92.

[8] *See* http://www.usac.org/li/tools/nlad/dispute-resolution/address-resolution.aspx (last accessed Feb. 15, 2018); *see also* http://www.usac.org/li/tools/nlad/dispute-resolution/tpiv-failure-dr.aspx (last accessed Feb. 15, 2018).

[9] *See* Letter from Ajit V. Pai, Chairman, Federal Communications Commission, to Vickie Robinson, Acting Chief Executive Officer and General Counsel, Universal Service Administrative Company, at 3 (July 11, 2017) (directing USAC to explore automating the process of comparing subscriber records against the Social Security Master Death Index at the time of subscriber enrollment or recertification). USAC staff indicated that the Social Security Master Death Index dips began in November 2017 at the January 29, 2018 USAC Board meeting public session. *See* Universal Service Administrative Company High Cost and Low Income Committee Briefing Book, 163 (Jan. 29, 2018) (USAC Briefing Book), available at http://www.usac.org/about/about/leadership/materials/.

[10] The Commission has confirmed that the TPIV check incurs a per-transaction cost. *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71, ¶ 183 (2015) ("These costs are incurred on a per-transaction basis and are paid for by the Fund to the TPIV vendor."). The Commission indicated that the price was $0.35 per query. *See id*. n. 345.

confirm a Lifeline applicant's eligibility for the program,[11] resulting in additional per query costs for every attempted Lifeline enrollment. These costs will be further increased if an applicant cannot be verified through a database check, in which case the applicant's information must be reviewed manually.[12] Because of the "per query" nature of these costs, the Commission and USAC have a shared interest in limiting attempted enrollments for Lifeline service to those that are in need as opposed to those that are "flipping" and abusing the program and service providers to accumulate multiple devices or multiple allotments of minutes or megabytes in a single month. The 60-day port freeze does just that, and has proven to be an essential tool to control these administrative costs with a minimal impact on reasonable expectations of consumer choice in the Lifeline program.

The 60-day port freeze also minimizes costs for ETCs. Without it, a Lifeline applicant can enroll with one ETC on the second of the month, receive a phone and use his or her allocation of voice minutes or megabytes of data and then transfer his or her benefit to another ETC a few days later to collect another phone and another allocation of minutes and/or megabytes. The applicant can continue to "flip" between providers throughout the month. In the end, only the ETC that serves the subscriber as of the first of the following month could submit a claim for Lifeline reimbursement. In such cases, the Lifeline program would only pay for one Lifeline service, but, as explained above, would incur associated database dip costs for each

[11] For example, in Colorado, one of the six states selected to be part of the initial launch of the National Verifier, USAC will attempt to verify an applicant's eligibility by querying the Federal Public Housing Assistance database that was developed by USAC and the Department of Housing and Urban Development, as well as Colorado-based SNAP and Medicaid databases. *See* http://www.usac.org/li/tools/national-verifier/default.aspx (last accessed Feb. 15, 2018).

[12] As the Commission has acknowledged, a manual review of eligibility documentation by USAC "is costly, burdensome, and inefficient." Notice of Proposed Rulemaking ¶ 61. Such costs can and should be minimized by retaining the 60-day port freeze, which will, by way of reducing the number of Lifeline applications, also limit the number of manual reviews required.

NLAD (and eventually, National Verifier) enrollment or benefit transfer. Additionally, all of the interim ETCs during that month would have provided a month's service with no Lifeline reimbursement.[13] This amounts to a tremendous waste for Lifeline providers and inhibits their ability to serve and improve service offerings for legitimate low-income subscribers who do not seek to abuse the Lifeline program or those providers who willingly participate in the program. To avoid such harms, the Commission should retain the 60-day port freeze.

2. The 60-Day Port Freeze Combats the Perception of Waste and Fraud By "Flippers"

In addition to avoiding excessive administrative costs, the 60-day port freeze combats the perception of waste and fraud in the Lifeline program. As noted above, in the absence of the port freeze, a consumer could abuse the program by transferring his or her Lifeline benefit between multiple providers in a month. Most of these transfers would provide the consumer with a new phone. The collection of multiple phones and phone services in a month by even a small number of unscrupulous individuals is typically portrayed in the media and perceived by the public as evidence of widespread waste and fraud in the program. This is true, even if, as explained above, the program only pays one reimbursement per month. Indeed, media reports of these rare instances[14] were the impetus for many of the previous reforms in the Lifeline program. The 60-

[13] Indeed, as Q Link Wireless recently observed, the Commission's "rules do not make the Lifeline providers' obligation to provide discounted service to an eligible Lifeline consumer contingent upon the consumer remaining a customer until the first day of the month. In any event, imposing an early termination fee on Lifeline consumers would be an exercise in futility, given that these consumers are poor and have difficulty paying any additional amounts for service." Letter from John T. Nakahata, Counsel to Q Link Wireless LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 17-287 et al. at 2 (filed Nov. 9, 2017).

[14] *See* "Despite Reforms, Federal Cell Phone Program Still Plagued By Fraud," News on 6, Oklahoma City (Feb. 11, 2013), available at http://www.newson6.com/story/21130543/despite-reforms-federal-cell-phone-program-still-plagued-by-fraud (last viewed Feb. 15, 2018); *see also* "Government's Free Phone Program Riddled With Abuse, Fraud," CBS4, Denver (Nov. 6,

day port freeze insulates the program from such inflammatory reports as a result of consumer flipping between multiple providers, as evidenced by the lack of new incidents of this nature being reported in the media in recent years.

B. The Commission Should Reconsider the Elimination of the 12-Month Port Freeze Because the Advantages Far Outweigh Any Potential Disadvantages

The Order on Reconsideration finds that "the disadvantages to consumers of the port freeze rule, in practice, outweigh the anticipated advantages."[15] However, this broad conclusion ignores key evidence about the benefits of the rule. Indeed, as explained below, the 12-month port freeze has been a key driver of modernizing the Lifeline program from voice-centric to primarily supporting broadband bundles for low-income Americans, and the customer-service provider relationship stability created by it has allowed ETCs to provide consumers with more robust broadband service and device options, including meeting increased minimum service standards. Eliminating the port freeze rule risks slowing or even halting this momentum, and potentially further widening, rather than closing, the digital divide. Additionally, to the extent that the Commission has concerns about a potential lack of consumer choice in the Lifeline program, there are other, far more effective measures that could be taken to address the issue. Therefore, the Commission should reconsider the decision to eliminate the 12-month port freeze for Lifeline-supported broadband.

2014), available at http://denver.cbslocal.com/2014/11/06/governments-free-phone-program-riddled-with-abuse-fraud/ (last viewed Feb. 15, 2018).

[15] Order on Reconsideration ¶ 35.

1. The 12-Month Port Freeze Has Been a Primary Driver of the Lifeline Program's Expeditious Shift from Voice Support to Broadband and Enables ETCs to Provide More Robust Broadband Service Options

The primary benefit of the 12-month port freeze is the expeditious transition of the Lifeline program from a voice-centric program before December 2016 when the port freeze rule took effect to a primarily broadband-centric program now. Indeed, just over one year since the Lifeline program began supporting broadband service, 75 percent of Lifeline subscribers are enrolled in a Lifeline service plan that includes broadband.[16] The Petitioners respectfully submit that the 12-month port freeze was the primary driver of the transition to broadband Lifeline service offerings from voice, which is something that Chairman Pai has proclaimed as an accomplishment.[17] The dramatic increase in Lifeline broadband subscribership since December 2, 2016, or even since Chairman Pai's statement on March 29, 2017, would not have occurred without the 12-month port freeze. When deciding whether to retain the port freeze rule, the Commission should rely on this tangible evidence of benefits to consumers and closing the digital divide, rather than a few anecdotal claims about potential limitations on consumer choice.[18]

Moreover, the 12-month port freeze has achieved its stated objective of "incentiviz[ing] greater up front investments from providers."[19] Similar to term commitments and device

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[16] *See* USAC Briefing Book at 161.

[17] *See* Statement of FCC Chairman Ajit Pai on the Future of Broadband in the Lifeline Program (Mar. 29, 2017) ("Right now, over 3.5 million Americans are receiving subsidized broadband service through the Lifeline program from one of 259 different Eligible Telecommunications Carriers (ETCs). And according to the latest available figures, the number of customers receiving subsidized broadband service has increased by over 16 percent during my Chairmanship.").

[18] *See* Order on Reconsideration ¶ 38 and n. 94.

[19] 2016 Lifeline Modernization Order ¶ 389.

payment plans outside the Lifeline program, the stability created by the 12-month port freeze enabled ETCs to increase their offerings to meet or exceed the ambitious broadband minimum service standards and provide Wi-Fi and hotspot-capable smartphones, often for free or at affordable prices, to low-income consumers. Thus, if the Commission's ultimate goal in this proceeding is to continue modernizing the Lifeline program and promote broadband adoption that is helping to close the digital divide, it should reconsider its decision to eliminate the 12-month port freeze. Alternatively, the Commission should at least monitor the percentage of Lifeline subscribers that receive Lifeline-supported broadband service, which is likely to decline following elimination of the port freeze rule as of March 19, 2018, and seek comment on this petition to reinstate the 12-month port freeze.[20] Otherwise, the Commission will risk reverting the Lifeline program back into a voice-centric program that provides important connectivity but fails to help close the digital divide.

2. The 12-Month Port Freeze Does Not Unreasonably Inhibit Consumer Choice, But Other Commission Policies and Decisions Have Done So

The claimed disadvantages of the 12-month port freeze are disingenuous and inaccurate and pale in comparison to the advantage of moving the Lifeline program to broadband as described above. The Order on Reconsideration observes that the 12-month port freeze was intended to increase consumer choice by facilitating market entry,[21] but supports the decision to

[20] Either way, those subscribers that are currently in a 12-month port freeze should remain in their port freeze until the year is up. Those customers were enrolled understanding that a 12-month port freeze would apply, and they were provided with enhanced service and equipment offerings because of the 12-month port freeze rule that was in effect at the time of enrollment. If the Commission allows its action to eliminate the 12-month port freeze to become effective, it should do so only on a prospective basis for enrollments that occur on or after the effective date of the rule change.

[21] *See* Order on Reconsideration ¶ 34.

eliminate it by disingenuously concluding that there is no evidence that new entrants were or are having difficulty entering the Lifeline market, and that it "limits Lifeline consumers' ability to seek more competitive offerings and obtain those services that best meet their needs."[22] These arguments are factually inaccurate. Other Commission policies and decisions have directly inhibited market entry to potential Lifeline providers, which has restricted consumer choice in providers and service offerings in a far more material manner than any potential restriction on consumer choice from the 12-month port freeze.

The 12-month port freeze no more inhibits consumer choice than the one or two year service commitments or device payment plans that non-low-income wireless consumers make every day. Indeed, most consumers choose a wireless provider carefully because they plan to remain with the same carrier for a year or more. For most consumers, the trade-off of a longer-term contract or financing plan in exchange for a more advanced handset and a better service plan is a reasonable one. Indeed, by making it easier to get smartphones in consumers' hands, these programs have helped to drive the rise of smartphones and the app economy. There is no reason that Lifeline-eligible low-income consumers should not be expected to make a similar decision. The 12-month port freeze facilitates access to broadband service and smartphones, without necessarily requiring customers to sign a contract or finance their device. In this way, it is a win-win for low-income consumers and the Lifeline program. Indeed, a year-long commitment is half as long as many postpaid contracts and device financing plans in the market today.[23]

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[22] *See id*. ¶ 35.

[23] For example, Verizon Wireless utilizes a device payment option that requires subscribers to "enter a device installment agreement to pay for the device in monthly payments over 24 months." *See* Verizon Wireless, "Device Payment FAQs," available at https://www.verizonwireless.com/support/device-payment-faqs/ (last viewed February 13, 2018).

On the other hand, several Commission policies or decisions have directly restricted market entry by Lifeline providers and therefore consumer choice in providers and service offerings. Specifically, as the Commission is well-aware, there are 35 compliance plans and 35 federal ETC petitions pending with the Commission, which have not been acted on for years, representing additional Lifeline provider competitors that seek to enter the marketplace to provide additional consumer options for carriers and service plans.[24] That approval bottleneck is the direct restriction on market entry. Further, the Commission received more than three dozen petitions for designation as a Lifeline Broadband Provider (LBP) in the wake of the 2016 Lifeline Modernization Order, many of which were submitted by entities that do not currently provide Lifeline service.[25] Once again, however, the Commission's refusal to act on these petitions—or in some cases to reverse LBP designations granted in 2016—has proven to be a direct barrier to entry and competition.[26] In addition, the Commission's Fourth Report and Order eliminated resellers from the Tribal Lifeline program, which will eliminate the service provider of choice for approximately 125,000 Tribal Lifeline subscribers,[27] and the accompanying Notice of Proposed Rulemaking seeks comment on eliminating all resellers from the entire Lifeline program, which would eliminate the service provider of choice for more than seven million

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[24] *See* Lifeline Compliance Plans and ETC Petitions, available at https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions (last viewed Feb. 15, 2018).

[25] *See* Lifeline Broadband Provider Petitions & Public Comment Periods, available at https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods (last viewed Feb. 15, 2018).

[26] *See Telecommunications Carriers Eligible for Universal Service Support, Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 09-197, 11-42, Order on Reconsideration, DA 17-128 (WCB rel. Feb. 3, 2017). The Petitioners submit that, at a minimum, the Commission could have utilized the streamlined LBP approval process set forth in the 2016 Lifeline Modernization Order to increase competition in the states which have relinquished jurisdiction over ETC designations.

[27] *See* Fourth Report and Order ¶¶ 21-30.

Lifeline subscribers.[28] It is difficult to take seriously claims of protecting consumer choice from a Commission that has essentially proposed to restrict the Lifeline program to a single wireless monopoly provider and a few dozen local wireline monopolies that reluctantly offer Lifeline to those smart enough to ask for it.

Additionally, the Lifeline program's minimum service standards essentially function as restrictions on consumer choice by requiring consumers to purchase a service offering with a certain amount of voice or broadband service, even if they could better afford a less expensive plan with fewer minutes or megabytes. As NTCA noted in its recent Petition for Waiver regarding the fixed minimum service standards, "the increase in speed [requirements] (to 15 Mbps download/2 Mbps upload) will almost certainly come with an increase in monthly rates that may be unaffordable for some low-income consumers, [which] could have the unintended consequence of forcing some low-income rural consumers to discontinue their service."[29] NTCA correctly suggested that its requested waiver "would ensure that low-income consumers now 'on the network' and enjoying the benefits of [broadband] as a result of the Lifeline program will have the choice of continuing to subscribe to 10/1 [broadband] *should they determine that such a service still better meets their needs and fits their budget*."[30] The same

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[28] *See* Notice of Proposed Rulemaking ¶ 67.

[29] *See* Petition for Temporary Waiver of NTCA–The Rural Broadband Association, WC Docket No. 11-42 et al. (filed Oct. 20, 2017) (NTCA Waiver Petition). The Lifeline Connects Coalition similarly urged the Commission to implement a qualitative, rather than quantitative minimum service standard in the wireless context that will allow greater flexibility in service options for consumers. *See Ex Parte* Letter from John J. Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 et al., 8 (Aug. 14, 2017). Indeed, data and experience show that where there are not affordable options, consumers are unwilling or unable to participate in the Lifeline program. *See, e.g.,* Letter from John J. Heitmann et al., Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC. Docket No. 11-42 et al. at 2 (Feb. 3, 2016) (observing that millions of low-income consumers simply could not afford Lifeline service under a co-pay or other minimum charge model).

[30] NTCA Waiver Petition at 3-4.

restrictions on consumer choice and device affordability exist with respect to the minutes and megabytes minimum service standards that apply to wireless providers. The Petitioners respectfully submit that rather than rushing to eliminate the 12-month port freeze under the guise of promoting consumer choice, it should first address these and other issues that create significant limitations on choice in the Lifeline program.

As demonstrated herein, the Commission should reconsider the decision to eliminate the port freeze rule due to all of the inherent benefits of this policy. The 60-day port freeze for voice services is a key tool to control program administrative costs, as well as protect the integrity of the Lifeline program, and the 12-month port freeze for broadband has been a principal driver of transitioning the Lifeline program to broadband and enabling ETCs to offer more robust broadband service options. Moreover, eliminating the port freeze rule will not resolve actual or perceived lack of consumer choice in the Lifeline program, but there are other, far more effective measures the Commission can and should take to accomplish this goal.

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION THAT ONLY ONE TECHNOLOGY MAY BE USED TO SATISFY THE LIFELINE BROADBAND MINIMUM SERVICE STANDARD

The MO&O concludes that "broadband Internet access delivered via Wi-Fi is not eligible for reimbursement as mobile broadband under the Lifeline program rules."[31] The Petitioners respectfully submit that the Commission should reconsider this decision for several reasons. First, the MO&O represents a misreading of the law, the Commission's rules, and the 2016 Lifeline Modernization Order. Second, the MO&O ignores and misinterprets substantial

[31] MO&O ¶ 47.

evidence in the record about Premium Wi-Fi[32] service. Finally, by limiting broadband in the Lifeline program only to licensed, cellular service, the Commission picks technological winners and losers and removes a competitive and innovative solution from the marketplace.

A. The Commission Failed to Conduct a Meaningful Legal Analysis in Reaching Its Decision

The Commission's determination that "premium Wi-Fi service and other similar networks of Wi-Fi-delivered broadband Internet access"[33] are not mobile broadband and that the broadband minimum service standards are limited to licensed, cellular service represents a misreading of the law, the Commission's rules, and the 2016 Lifeline Modernization Order. For this reason alone, the Commission must reconsider the MO&O.

1. The Commission Ignores the Statutory Text, Its Own Rules and Orders, and the Record in Finding That Premium Wi-Fi Service Is Not Mobile Broadband

The MO&O ignores the statutory and regulatory definitions underlying mobile broadband in favor of sparse citations to a trade association pamphlet and a single cellular coverage map. In its submissions to the record, Telrite demonstrated that its Premium Wi-Fi service meets the definition of mobile broadband, which is not limited to licensed, cellular wireless services.[34]

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[32] As used herein, "Premium Wi-Fi" service means (1) mobile broadband Internet access service (BIAS) that (2) uses a geographically dispersed network of wireless access points relying on unlicensed spectrum to deliver BIAS and (3) enables mobility between those access points through seamless handoff. Consistent with the Commission's findings in the *Restoring Internet Freedom* proceeding, Premium Wi-Fi would not include Wi-Fi enabled broadband Internet access service provided by establishments such as "coffee shops, bookstores, airlines, private end-user networks such as libraries and universities, and other businesses that acquire [BIAS] from a broadband provider to enable patrons to access the Internet from their respective establishments," unless the offering "was offered to patrons as a retail mass market service" and met the definition of Premium Wi-Fi above. *See Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, FCC 17-166, ¶ 25 (rel. Jan. 4, 2018).

[33] MO&O ¶ 49.

[34] *See* Letter from John J. Heitmann, Counsel to Telrite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90, 7-8 &

First, Premium Wi-Fi service is broadband because it is "[a] mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service."[35] Second, Premium Wi-Fi service is mobile broadband because it "serves end users primarily using mobile stations" (i.e., "a station in the mobile service intended to be used while in motion or during halts at unspecified points").[36] As Telrite submitted in the record, "the definition of mobile BIAS, by its terms, is not limited to cellular BIAS," and "*also includes* services" such as mobile satellite services "that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet."[37] Further, the 2016 Lifeline Modernization Order specifically

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n.23 (Jan. 27, 2017) (Telrite January 27 Letter) (Telrite's Premium Wi-Fi meets the definition of broadband); Comments of Telrite Corporation d/b/a Life Wireless in Response to TracFone's Request for Clarification, WC Docket No. 11-42, 13-16 (Mar. 2, 2017) (Telrite Comments). *See also* Letter from John J. Heitmann, Counsel to Telrite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 09-197, 10-90, 11-42, 17-287 (Nov. 9, 2017) (Telrite November 9 Letter); Letter from John J. Heitmann, Counsel to Telrite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 (Apr. 3, 2017) (Telrite April 3 Letter); Letter from John J. Heitmann to Marlene Dortch, WC Docket No. 11-42 (Mar. 29, 2017) (Telrite March 29 Letter); Reply Comments of Telrite Corporation d/b/a Life Wireless in Response to TracFone's Request for Clarification, WC Docket No. 11-42 (Mar. 9, 2017) (Telrite Reply Comments); Letter from John J. Heitmann, Counsel to Telrite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 09-197, 10-90, 11-42 (Feb. 24, 2017) (Telrite February 24 Letter); Letter from John J. Heitmann, Counsel to Telrite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 09-197, 10-90, 11-42 (Feb. 17, 2017) (Telrite February 17 Letter).

[35] *See* Telrite Comments at 14-15. *See also* Telrite April 3 Letter at Enclosure, Exhibit G; Telrite February 24 Letter at Enclosure; Telrite February 17 Letter at Enclosure; Telrite January 27 Letter at 4.

[36] Telrite Comments at 14-15. Mobile service is "[a] radiocommunication service between mobile and land stations, or between mobile stations." *See also* Telrite November 9 Letter at 2-4; Telrite April 3 Letter at Exhibits A-F; Telrite March 29 Letter at 3-4; Telrite Reply Comments at 4; Telrite February 24 Letter at Enclosure; Telrite February 17 Letter, Enclosure; Telrite January 27 at 4.

[37] Telrite Comments at 15. *See also* November 9 Letter at 2; Telrite April 3 Letter at Exhibit C, Exhibit G; Telrite January 27 Letter at 5.

encourages providers to offer innovative broadband solutions to reach low-income subscribers,[38] lending support to the conclusion that the Order did not intend to limit the definition of mobile broadband to traditional licensed, cellular services as they are offered today. Indeed, the Commission could not have reasonably encouraged innovative services without considering next-generation "Wi-Fi First" offerings, which were some of the most innovative mobile offerings coming to market when it adopted the 2016 Lifeline Modernization Order.

Other commenters in the record further supported Telrite's legal analysis that Premium Wi-Fi is broadband, including petitioner TracFone. Specifically, in its reply comments, TracFone conceded both that Premium Wi-Fi is broadband and, separately, that a consumer's mobile device is a "mobile station."[39] Thus, while not explicitly conceding Telrite's argument, TracFone implicitly reaches the same conclusion: Premium Wi-Fi meets the letter of the mobile broadband definition.[40]

In the MO&O, however, the Commission ignored the text of the statute, the 2016 Lifeline Modernization Order, and Telrite's arguments in the record, instead citing a coverage map derived from its Form 477[41] data and a trade association "Spectrum Primer Series" to reach the

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[38] *See* 2016 Lifeline Modernization Order ¶ 373.

[39] *See* Reply Comments of TracFone Wireless, Inc., WC Docket No. 11-42, i, 9 (filed Mar. 9, 2017) (TracFone Reply).

[40] *See* Telrite March 29 Letter (citing TracFone Reply at i, 7, 9).

[41] The fact that Wi-Fi is not included in the Commission's Form 477 data doesn't mean that Premium Wi-Fi service is not mobile broadband under the statute. Indeed, while the Form 477 instructions state that a provider of "terrestrial wireless 'hot spot' services" is not a "facilities based provider[] of broadband connections," it does not analyze whether Premium Wi-Fi service is mobile broadband under the Commission's rules. *See* Form 477 Instructions (Dec. 5, 2016). In fact, the Commission has even sought comment on whether to include premium-Wi-Fi-like services in its Form 477 mobile broadband data collection. *See Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10 (Aug. 4, 2017) ("[W]e seek comment on whether and, if so, in what circumstances, should the Form 477 take into account the deployment of facilities used in non-traditional ways in offering wireless services to consumers? For example, while Wi-Fi facilities traditionally have provided consumers with portable, not mobile, wireless connectivity, should the Form 477 track deployment of such facilities when offered to consumers

conclusion that Premium Wi-Fi is not mobile because it does not "provide ubiquitous mobility with large service area coverage."[42] Not only does the Commission's analysis ignore the relevant definitions, it invents requirements where there are none. Nothing in the legal definition of mobile broadband requires such ubiquitous coverage.[43] If the Commission intended to make such a sweeping change to its definition of mobile broadband, the Administrative Procedure Act requires it to provide the public with notice and an opportunity to comment on the proposal. It did not do so here, and therefore the MO&O is legally flawed.[44]

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in conjunction with resold mobile service? Might there develop other wireless services based exclusively on the integration of numerous unlicensed facilities, such as Wi-Fi routers, that might warrant tracking in Form 477? If so, under what circumstances, and how should any such facilities deployment be reported?"). All of this goes to show that the Commission's reliance on Form 477 is a distraction from meaningful legal analysis. The Form 477 is not only non-dispositive, it's irrelevant.

[42] MO&O ¶ 51.

[43] Indeed, were that to be the case, limited facilities-based networks such as Smith Bagley's likely would not meet the definition of mobile broadband. Further, the Alaskan Telephone Association has raised this very issue in its petition for a waiver from the Lifeline rules. *See* Alaska Telephone Association Petition for Clarification and Waiver of Lifeline Minimum Service Standards, WC Docket No. 11-42 et al. (Dec. 4, 2017). If the Commission's interpretation is correct, many providers in rural and remote areas will be unable to meet the standard, and their low-income customers will be left without a Lifeline service offering. Surely that wasn't the intent of the Communications Act or the 2016 Lifeline Modernization Order. Moreover, it is flatly inconsistent with the Commission's stated goal of bridging the digital divide.

[44] The hypothetical example that the Commission uses to support its result—wherein a fixed broadband provider blocks all connections except Wi-Fi connections to mobile devices in order to treat the service as mobile broadband and collect Lifeline subsidies—is a mirage. *See* MO&O ¶ 51. If the Commission were concerned about such a scenario it could by rule exclude them, either by requiring a Premium Wi-Fi provider to have a cellular backstop (as Telrite, as well as "Wi-Fi First" providers such as Comcast and Google do), or by determining that Premium Wi-Fi must demonstrate a certain level of coverage within a local area or provide adequate disclosures to be eligible (Lifeline eligible consumers should not be denied the ability to choose the service options that best fit their needs and budgets).

2. The Commission's Interpretation of the Mobile Broadband Minimum Service Speed Standard Is Legally Flawed

In the MO&O, the Commission finds that its minimum service standards require an ETC to provide licensed, cellular mobile broadband in order to claim Lifeline reimbursements.[45] Specifically, the Commission finds that Premium Wi-Fi service is not mobile broadband for purposes of meeting the minimum service speed standards because the 2016 Lifeline Modernization Order "makes it clear that it was incorporating industry mobile technology generations," which "contemplates not just a minimum of '3G' mobile network threshold speeds, but also a mobile network."[46] The Commission further states that "[t]here is no evidence in the record that Wi-Fi-only technology, as deployed today, is a 'mobile technology' or one of the 'generations' of mobile technologies."[47]

The Commission's analysis is flawed. First, there is substantial evidence on the record that Premium Wi-Fi service such as Telrite's offering is a mobile technology and has been considered part of the next generation of mobile technologies. Specifically, Telrite argued that its Premium Wi-Fi was mobile broadband and demonstrated that the service permits seamless handoff between hotspots. Further, even if Telrite didn't argue that its Premium Wi-Fi service was mobile broadband, it's absurd to argue that Wi-Fi technology—a wireless protocol that enables consumers to access a network from a mobile device while stationary *or on the go*—is not a mobile technology. Moreover, as Telrite submitted in the record, commentators—including those that the FCC relies upon—have suggested that a critical component of future

[45] *See* MO&O ¶¶ 50-51.

[46] *See id.* ¶ 51.

[47] *See id.* ¶ 49.

generations of mobile networks involves unlicensed services like Wi-Fi.[48] Prejudging now what future generations of technology will be constitutes a lamentable demonstration of regulatory hubris, particularly when used to digitally disenfranchise millions of low-income Americans.

Because it failed to engage in meaningful legal analysis and the sparse legal analysis it did conduct was flawed, the Commission should reconsider the MO&O and find that Premium Wi-Fi service or other similar Wi-Fi-delivered mobile broadband Internet access service is mobile broadband eligible for Lifeline support.

B. The MO&O Ignores Substantial Record Evidence, Misconstruing the Nature of Premium Wi-Fi Service

The Commission should reconsider the MO&O because it misconstrues the nature of Premium Wi-Fi service, blatantly ignoring substantial record evidence. In the Order, the Commission determines that Premium Wi-Fi service is not mobile broadband and is therefore ineligible for Lifeline support because "the iPass network used to provide the premium Wi-Fi service keeps customers connected in 'hotels, airports, and other business venues,' trains, airplanes, and convention centers, and in many towns only includes hotspots at establishments with pre-existing free public Wi-Fi offerings, like McDonalds, Burger King, and Walmart."[49] The Commission further relies on three small towns for its conclusion about the deployment of Premium Wi-Fi and one ZIP code where Telrite has no subscribers.[50]

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[48] *See* Telrite Comments at 15-16 (citing Dave Fraser, "Hybrid Wi-Fi-Cellular Service Is the Future" (July 26, 2016), *available at* http://www.multichannel.com/blog/mcn-guest-blog/hyrbid-wifi-cellular-servicefuture/406645 ("Well executed hybrids are the future of the industry"); GSMA Intelligence, Understanding 5G: Perspectives on future technological advancements in mobile, at 6 (Dec. 2014) (describing a leading vision for 5G mobile data as "a blend of pre-existing technologies" including Wi-Fi)).

[49] *See* MO&O ¶ 52.

[50] *See id.*

This is a deliberate and disingenuous misreading of the record. As Telrite commented on the record, "Telrite's Premium Wi-Fi service offering provides secure VPN access to iPass's private network of 34 million access points, which include *private home* and commercial access points."[51] Telrite reiterated this point in response to TracFone's similar misreading of the record.[52] Further, while Telrite's underlying Premium Wi-Fi provider—iPass—has offered its service as a service for business travelers (as evidenced by the limited marketing materials on which the Commission relies for its conclusion), its partnership with Telrite was designed to expand into retail mobile broadband, and to leverage millions of residential hotspots from large cable providers.

The Commission's failure to distinguish between Telrite's Premium Wi-Fi service—as described on the record—and the marketing for iPass's business traveler offering, is material error and justifies a reconsideration of the MO&O finding that Premium Wi-Fi service is mobile broadband.

C. The MO&O Picks Winners and Losers in Violation of the Principles of Technology Neutrality And Consumer Choice

In the MO&O, the Commission ignores the law and misconstrues basic facts about Premium Wi-Fi service in order to reach a result that picks technological winners and losers and removes a competitive and innovative solution from the marketplace.

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[51] *See* Telrite Comments at 2 (emphasis added). *See also* Telrite November 9 Letter at 9; Telrite April 3 Letter at Exhibit B, Exhibit C, Enclosure, Exhibit F; Telrite Reply Comments at 1, 6-7; Telrite February 17 Letter at 2; Telrite January 27 Letter at 2-3, 7.

[52] *See* Letter from John J. Heitmann to Marlene H. Dortch, WC Docket No. 11-42, 5 (Mar. 29, 2017) ("TracFone ignores the fact that iPass relies on residential broadband connections through partnerships with national and regional broadband providers, providing BIAS that includes millions of homes.").

The Commission has had a long-standing policy of technology neutrality, including in the Lifeline Program. In the USF First Report and Order, the Commission devoted an entire section to the concept of ensuring competitive and technology neutrality in Lifeline, concluding that "universal service support mechanisms and rules should not unfairly advantage one provider, nor favor one technology."[53] Technology neutrality is important, as FCC Chairman Ajit Pai and FTC Acting Chairman Maureen Ohlhausen have said, because "[t]he federal government shouldn't favor one set of companies over another . . . a uniform approach is in the best interests of consumers and has a long track record of success."[54] In recent proceedings, the agency's Republican commissioners and their key advisors have in particular touted the value of technology neutrality on issues including privacy, spectrum allocation, and infrastructure deployment.[55] And yet, the Commission's decision to exclude Premium Wi-Fi service providers

[53] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 364 (rel. May 8, 1997) (referring to neutrality both in the context of contributions and disbursements).

[54] Joint Statement of FCC Chairman Ajit Pai and Acting FTC Chairman Maureen K. Ohlhausen on Protecting Americans' Online Privacy (Mar. 1, 2017).

[55] *See* Prepared Remarks by Rachael Bender, Advisor to FCC Chairman Pai, at the 6th Annual Americas Spectrum Management Conference (Oct. 12, 2017); Remarks of FCC Commissioner Michael O'Rielly Before 5G Americas' "Technology Briefing" (October 5, 2017); Remarks of Rachael Bender at the 33rd Annual Conference of the Caribbean Association of Network Telecommunications Organizations (Jul. 18, 2017); Report and Order and Further Notice of Proposed Rulemaking, Statement of Commissioner Michael O'Rielly, Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities, GN Docket No. 13-111 (Mar. 24, 2017); Remarks of FCC Commissioner Michael O'Rielly Before the Satellite Industry Association Annual Dinner (Mar. 6, 2017); Joint Statement of FCC Chairman Ajit Pai and Acting FTC Chairman Maureen K. Ohlhausen on Protecting Americans' Online Privacy (Mar. 1, 2017); Order, Statement of Commissioner O'Rielly Approving in Part and Dissenting in Part, Connect America Fund, WC Docket No. 10-90, ETC Annual Reports and Certifications, WC Docket No. 14-58, (Jan. 26, 2017); Report and Order, Dissenting Statement of Commissioner Ajit Pai, Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106 (Nov. 2, 2016); Tariff Investigation Order and Further Notice of Proposed Rulemaking, Dissenting Statement of Commissioner Michael O'Rielly, Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143, Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, WC Docket No. 15-247, Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25, AT&T Corporation Petition for Rulemaking to Reform Regulation of

from the Lifeline program in its MO&O is the very definition of technological favoritism. Why should low-income Americans be exempt from the neutrality shown in other areas of Commission policy?

As discussed above, there is no legal or policy basis for excluding Premium Wi-Fi service from the Lifeline program. It meets the definition of mobile broadband and the policy aims of the 2016 Lifeline Modernization Order, offering consumers a new and innovative solution backed by traditional cellular data. This service is similar to many new popular Wi-Fi-First services on the market, including Google's Project Fi, Comcast's wireless offering, and offerings from providers such as Republic Wireless. Commentators have described such hybrid offerings as "the future" of mobile broadband. And yet, by excluding Premium Wi-Fi service from Lifeline support, the Commission imposes its technology preferences on low-income consumers (whom by necessity often are early adapters of technology) and deprives them of the ability to choose whether they would prefer a cellular service with limited data and throughput but wide coverage, or a Premium Wi-Fi service with unlimited data (but perhaps narrower geographic coverage), faster-than-3G-speeds, and a cellular data backstop. This regrettable case of regulatory paternalism and hubris must be reconsidered as it squarely undermines the Commission's commitment to "empower consumers" to evaluate the trade-offs of various services and to choose a service that best meets their needs and budget.

The Commission therefore should reconsider the MO&O and permit consumers to apply their Lifeline benefit to Telrite's Premium Wi-Fi service and similar services offered by other

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Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593 (May 2, 2016).

service providers. Otherwise, the Commission risks locking Lifeline subscribers in the technology of the past and burning the very bridges it seeks to build in this proceeding.

CONCLUSION

For the reasons stated herein, the Commission should reconsider the decision in the Order on Reconsideration to eliminate the port freeze for Lifeline-supported voice and broadband Internet access services. It should also reconsider the MO&O and permit consumers to apply their Lifeline benefit to Premium Wi-Fi, as defined herein, and other similar Wi-Fi-delivered mobile broadband Internet access services. Otherwise, the Commission will have missed key opportunities to build bridges across the digital divide that separates Lifeline eligible low-income Americans from policymakers and others who are fortunate enough not to have to engage in a daily personal struggle to establish and maintain connectivity.

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